IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: TRUMP ENTERTAINMENT RESORTS, INC., *et al.*, Debtors.	Chapter 11 Case No. 14–12103 (KG) (Jointly Administered) **Related to Docket Nos. 712, 713 and 716**

LIMITED OBJECTION OF TRUMP AC CASINO MARKS, LLC, DONALD J. TRUMP AND IVANKA TRUMP TO THE DISCLOSURE STATEMENT FOR DEBTORS' THIRD AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Trump AC Casino Marks, LLC ("**Trump AC**"), Donald J. Trump ("**Mr. Trump**") and Ivanka Trump (collectively, the "**Trump Parties**") by and through their undersigned counsel, hereby object (the "**Objection**") to the *Disclosure Statement for Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 713] (the "**Disclosure Statement**")[1], filed by debtor Trump Entertainment Resorts, Inc. ("**TER**") and its above-captioned affiliated debtors and debtors-in-possession (collectively, the "**Debtors**"). In support of this Objection, the Trump Parties respectfully state as follows:

PRELIMINARY STATEMENT

1. The Disclosure Statement describes a plan that, at its core, looks to impermissibly strip away rights of many critical parties in favor of one party – the First Lien Lenders, and is unconfirmable. Though the Court could and should deny the approval of the Disclosure Statement on that basis alone, the Trump Parties will address the numerous plan defects in the

[1] Capitalized terms used but not otherwise defined herein shall be given the meanings ascribed to them in the Disclosure Statement or the *Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 712] (the "**Plan**").

context of a contested plan confirmation process. However, that process should not get underway without the Debtors more fully describing certain aspects of that plan, the risks that the Debtors face in confirming and consummating their proposed Plan and how creditors are impacted by the lengthy delay the Debtors seek to impose on creditors before going effective, if they ever go effective. Indeed, with the uncertainty circling the Effective Date, nothing has changed from the last iteration of the Plan that previously caused this Court concern.

2. Thus, for the reasons set forth herein, the Disclosure Statement fails to provide adequate information as required by section 1125(a) of title 11 of the United States Code (the "**Bankruptcy Code**") and should, therefore, be rejected.

RELEVANT BACKGROUND

A. The Bankruptcy Cases

3. On September 9, 2014, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On January 5, 2015, the Debtors filed the Plan and the Disclosure Statement.

4. Though some of the economics have changed, the uncertainty of the Effective Date under that Plan and the extended time-frame during which creditors are left in limbo, issues about which this Court has already expressed concern, have not. See Nov. 14, 2014 Transcript 14:2-20, 18:10-14, 18:16:21 ("One concern I've got is with the timing that we're all talking about here. A big contingency in the papers that popped out at me is the fact that what I'll call the collective bargaining agreement order basically has to go final as -- for the secured creditor to receive -- to proceed. . . . [T]here's no real hard date here other than one that is being requested, it seems to me, but there's no basis for it. Am I missing something?"); ("See one thing that's changed for me and which concerns me for today is that with the prior plan, and I don't remember which side argued it, I think it may have even been you, disclosure wasn't as critical

because unsecureds weren't voting ... unsecureds weren't receiving anything. They now have to review a plan and understand a plan, and I don't think that what I received from what I read frankly would be comprehensible to unsecured creditors with all of the what ifs. I don't think they would know what really they were voting on at this point.").

B. The License Agreement and License Agreement Litigation

5. In connection with the 2009 bankruptcy cases of TER and certain of its subsidiaries, the Trump Marks were licensed to certain of the Debtors pursuant to the Amended and Restated Trademark License Agreement (the "**License Agreement**") for use in connection with the Debtors' casino and hotel related activities. (See Disclosure Statement at ¶ 4.7(b); DJT Lift Stay Motion, Ex. A.) As described in detail in the DJT Lift Stay Motion, the Licensee Debtors have grossly failed to meet their obligations under the License Agreement, including by:

(a) Failing a Quality Assurance Review at the Plaza as evidenced by the 2012 Report, and failing to cure that default within the required timeframe as confirmed by the 2014 Report, in violation of Section 4.1.6 of the License Agreement;

(b) Failing to utilize the Trump Marks in a "dignified manner" consistent with "the highest quality" and "at a level consistent with or exceeding the high reputation and importance of" the Trump Marks at both the Plaza and the Taj in violation of Section 4.1.5 of the License Agreement;

(c) Engaging in online internet gaming activities with customers who reside outside of the State of New Jersey in violation of Section 2.8 of the License Agreement;

(d) Utilizing the Trump Marks in association with the closed and non-operational Plaza in violation of Section 5.1.8 of the License Agreement; and

(e) The potential closure of the Taj, which threatens to result in a further violation of Section 5.1.8 of the License Agreement.

(DJT Lift Stay Motion at ¶¶ 24-34, 38-39; DJT Lift Stay Motion, Ex. B.)

6. As a result of the Debtors' uncured (and incurable) defaults under the License Agreement, on August 5, 2014, Trump AC filed a Verified Complaint and supporting documents with the Superior Court of New Jersey, Chancery Division, Atlantic County, seeking an order declaring the License Agreement terminated, prohibiting the Debtors from making any further use of the "Trump" name and trademark, and removing the "Trump" name and brand from its properties. (See DJT Lift Stay Motion, Ex. B.)

7. Along with its Verified Complaint, Trump AC obtained an order to show cause, seeking a preliminary mandatory injunction against the Debtors, which was signed and entered in the State Court Action on August 6, 2014. (See id., Ex. J.)

14. On September 24, 2014, Trump AC filed the DJT Lift Stay Motion seeking relief from the automatic stay to complete the process of terminating the License Agreement through the State Court Action. This Court conducted a final hearing on the DJT Lift Stay Motion on December 11, 2014 [see Docket No. 618], and the matter is currently under consideration by the Court.

C. The Ground Lease

15. Plaza Associates is the successor lessor under the Ground Lease with R&R (and an assignee under a sublease from Mr. Trump). The Ground Lease relates to real property

comprising the driveway leading to the entrance of the Plaza. As such, the leased premises are critical to any user of the Plaza and an important component of the overall value of that property.

16. Notwithstanding the importance of that property, the Debtors have completely refused to honor their obligations thereunder, including neglecting those that have first arisen post-petition (*e.g.*, for real estate taxes), and instead have rejected Mr. Trump's demand that they pay and insisted upon thrusting responsibility therefor to Mr. Trump, who as a former assignee, remains responsible to the landlord yet derives no benefit from the property. In fact, the Debtors' failure and refusal to pay its real estate taxes resulted in the post-petition sale of tax sale certificates encumbering the property, which Mr. Trump recently redeemed after the landlord issued a notice of default.

OBJECTION

A. Applicable Legal Standard

17. The disclosure requirements set forth in section 1125 of the Bankruptcy Code are important, indeed fundamental, to the functioning of the bankruptcy process. Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 362 (3d Cir. 1996) ("[D]isclosure requirements are crucial to the effective functioning of the federal bankruptcy system . . . [and] the importance of full and honest disclosure cannot be overstated."). Section 1125 of the Bankruptcy Code serves the purpose of assisting creditors in negotiating with debtors over the terms of a plan. See Century Glove, Inc. v. First Am. Bank of New York, 860 F.2d 94, 101-02 (3d Cir. 1988).

18. The disclosure statement must describe all factors known to the plan proponent that may impact the success or failure of the proposals contained in the plan. See, e.g., In re Beltrami Enters., Inc., 191 B.R. 303, 304 (Bankr. M.D. Pa. 1995); In re Cardinal Congregate I, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990).

19. Indeed, Bankruptcy Code section 1125(a) was amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to increase the required disclosure necessary for a disclosure statement to contain "Adequate Information," which is now defined as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors or other parties in interest, and the cost of providing additional information[.]

11 U.S.C. § 1125(a).

20. This Court has substantial discretion in determining whether a disclosure statement provides "adequate information" as required by section 1125 of the Bankruptcy Code. See, e.g., Texas Intrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.), 844 F.2d 1142, 1157 (5th Cir. 1988), cert. denied, 488 U.S. 926 (1988) ("The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."). Section 1125 of the Bankruptcy Code defines the concept of adequate information, essentially, as information that would enable "a hypothetical investor of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). Adequate information will be determined based upon the facts and circumstances of each case. See Cardinal Congregate I, 121 B.R. at 764 ("Congress left vague the standard for evaluating what constitutes adequate information so as to permit a case-by-case determination based on the prevailing facts and circumstances."). If a plan does not contain adequate information within the meaning of section 1125 of the Bankruptcy Code, then confirmation of the Plan will fail under section 1129(a)(2) of the Bankruptcy Code.

B. The Disclosure Statement Wrongly States That The First Lien Agent Can Unilaterally Transfer The Rights And Obligations Under The License Agreement.

21. The Disclosure Statement inaccurately claims that the First Lien Agent has the power and authority to simply appoint the Reorganized Debtors as transferees of the rights and obligations under the License Agreement without the Trump Parties' consent. That assertion is absolutely wrong and flies in the face of the express terms of the governing agreements.

22. Specifically, Section 7.7(e) of the Disclosure Statement, which describes the treatment of executory contracts and lease under the Plan (and specifically Section 10.5 of the Plan), provides that:

> On the Effective Date, unless previously assumed by the Debtors, the Debtors or the Reorganized Debtors, as the case may be, pursuant to section 365 of the Bankruptcy Code, shall assume the Trademark License Agreement; provided, however, that if the Court determines that the Trademark License Agreement cannot be assumed by the Debtors or Reorganized Debtors without the consent of the Trump Parties, then the automatic stay is hereby modified to permit the First Lien Agent to, and on the Effective Date the First Lien Agent shall and shall be deemed to, enforce its rights under the First Lien Security Agreement and designate the Reorganized Debtors as transferees of each of the Casino Properties (as defined in the Trademark License Agreement) as Licensee Entities (as defined in the Trademark License Agreement) under the Trademark License Agreement.

23. Yet, the description of that Section of the Plan, which is intended to have the effect of relieving a non-Debtor (the First Lien Agent) from compliance with its own contractual obligations under the Consent Agreement, fails to acknowledge that obtaining such relief would require eviscerating the fundamental rights of the parties under the applicable agreements relating to the use of the license. For example, in stark contrast to what the Debtors propose, the License Agreement provides that "without the prior written consent of the Trump Parties, in their sole and absolute discretion, none of the Licensee Entities may assign, sublicense or pledge any

of their rights or obligations under this Agreement." (License Agreement at § 9.2). The Disclosure Statement fails to describe how the Debtors can achieve such an unlawful result.

24. Similarly, in the corresponding Consent Agreement, the Trump Parties agreed to a very limited and narrow exception that allows only Icahn Agency Services, LLC ("**Icahn**") the ability to take over the rights and obligations under the License Agreement in the place of the Debtors. The Consent Agreement states that Trump AC (as assignee) agreed "to transfers … from time to time of the right of any one or more of the [Debtors] … upon and following the enforcement by the Collateral Agent [Icahn] of its rights under the Security Agreement." (Consent Agreement, DJT Lift Stay Motion Exhibit C, at ¶ 4.) In other words, the Consent Agreement merely allows Icahn the limited ability to step into the shoes of the Debtors under the License Agreement after enforcing its rights under the Security Agreement and be bound by all of the terms of the License Agreement (including being subject to the pending termination of the License Agreement). In that situation, Icahn would be treated as a direct party to the License Agreement with primary responsibility and liability under that agreement, an outcome they seek to avoid through the wrongful assignment/transfer being proposed.[2]

25. The Consent Agreement prohibits any further assignment of the rights or obligations under the License Agreement. (See id. at ¶ 4(b) ("[n]o transferee . . . shall have the further right to assign . . . the Assigned Agreement to a subsequent transferee"), p. 2 ("Collateral Agent may not assign, sublicense or pledge or in any way transfer any of its rights or obligations under this Consent and Agreement").)

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[2] It should be noted that whatever limited rights Icahn did have to step into the Debtors' shoes under the License Agreement have long since expired since Icahn failed, despite due notice, to "cure" the defaults under the License Agreement as it was obligated to do under the Consent Agreement. This Court should decline Icahn's invitation to grant it new rights when it failed to take advantage of the opportunity to properly enforce the rights that were previously negotiated among the parties.

26. The First Lien Agent thus possesses absolutely no ability to unilaterally appoint any other party, including the Reorganized Debtors, to assume the rights and obligations under the License Agreement. Because the Trump Parties have not, and will not, consent to any such transfer of the License Agreement, Section 7.7(e) of the Disclosure Statement describes relief fraught with risk without describing in any way how it can be accomplished over the Trump Parties' objection.

C. The Disclosure Statement Utterly Fails To Address the Nature of All Administrative and Priority Claims and Whether the Debtors Can and Will Satisfy Them.

27. Given the uncertainty of the Effective Date and the long period of time during which creditors are left in limbo after confirmation – issues of concern to this Court already – a true understanding of the breadth and nature of administrative and priority claims is essential. This is especially true given that one of the conditions to the Effective Date under the Plan is that administrative and priority claims cannot exceed a $7.5 million cap. See Plan, at 11.2(h).

28. Though the liquidation analysis annexed to the Disclosure Statement as Exhibit 3 identifies amounts for administrative and priority claims, the Disclosure Statement lacks fulsome disclosure regarding the true nature of those claims and the risk that the Plan will not go effective (and those claims never paid) if those claims exceed the $7.5 million cap. Creditors have no way to assess what the total of the administrative and priority claims might be, what administrative claims might continue to accrue in the lengthy period between confirmation and the Effective Date, and whether the Debtors have or will have sufficient funds to pay such claims on the Effective Date.[3]

[3] If the Debtors intend to delay payment of cures and administrative claims pending the Effective Date, then all administrative creditors – including professionals in these cases, should similarly await payment or at a minimum take such payments with the understanding that they must be disgorged if other administrative creditors and cure payments are not paid in full.

29. In any event, creditors should be dubious regarding the amount of unpaid administrative claims and whether the Debtors are actually going to be administrative insolvent as there exist several obligations the Debtors have failed to pay.[4] For example, the Debtors have failed and refused to pay post-petition real estate taxes on the property covered by the ground lease, resulting in a lien and sale of a tax sale certificate. Despite several demands by Mr. Trump that the Debtors pay those taxes, the Debtors refused, requiring Mr. Trump to pay $24,578.25 to redeem the tax sale certificate. At a minimum, as they did with respect to the disclosure of Mr. Trump's claims relating to the payment of the rent for that property, they should disclose that Mr. Trump has an administrative claim for the taxes that he advanced on behalf of the Debtors and commit to pay such amounts on the Confirmation Date (not the uncertain Effective Date).

30. There are other examples of the Debtors' failures to honor their post-petition obligations. The Debtors have also failed to honor their post-petition obligations to an affiliate of the Trump Parties, DJT Aerospace LLC. As set forth in DJT Aerospace's recent limited objection to the rejection of its lease, the Debtors have failed to make a single post-petition lease payment to DJT Aerospace, thereby incurring approximately $130,000 in administrative liability that will need to be repaid in connection with the Plan. And until recently, the Debtors had failed to pay the post-petition obligations under the hangar lease where the helicopter was stored. The non-payment of these obligations calls into question the veracity of the information contained in the Debtors' sworn operating reports and whether the Debtors are or will be administratively insolvent.[5] The Debtors should disclose the nature of their unpaid administrative claims and the

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[4] This does not even take into account Trump AC's claims for damages that it believes are entitled to administrative treatment (which could total millions).

[5] For example, the Debtors' latest operating report reflects that TER Holdings is current on its post-petition accounts payable (with $1,000 due within the period from 0-30 days and $0 due for the period 31-60 days). Yet, that is obviously inaccurate as the Debtors had until recently failed to pay post-

consequences flowing from their delinquencies and the First Lien Agent should guarantee that all such obligations (inclusive of cures) will be paid in full within several days of confirmation rather than creating some option of payment by the diabolical use of an uncertain Effective Date.[6]

D. The Disclosure Statement Fails To Identify The Debtors' Significant Loss Of Employees And Management Personnel and The Impact It Will Have On Operations.

31. Critically absent from the Disclosure Statement is any explanation outlining how negatively operations have been impacted since the Petition Date and how bleak the prospect of succeeding might well be. Without limitation, the Debtors should explain whether and to what extent they have lost key management personnel during the case and whether those losses will affect their ability to successfully operate the Taj in the future.

32. The Debtors should also explain how they can survive given the substantial decrease in the loans that would now be available (which went from $100 million under the prior iteration of the Plan to $33.5 million). Given that the Taj will now remain open (the condition under which the Debtors were provided access to a $100 million loan), creditors are left to wonder how they can now operate with loans aggregating only one-third of that amount.

33. The lack of disclosure on these issues leave creditors with inadequate information to assess the feasibility of the Plan.

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petition obligations under the hangar lease (which were at least $55,000 for the post-petition period) and to DJT Aerospace (which are no less than $130,000, comprised of base rent for September 2014 through December 2014 ($32,500 * 4 months)).

[6] For example, if the Debtors' have opted to ignore the payment of real estate taxes (as they did with respect to the Plaza driveway property), they should describe the possible negative consequences for doing so, including the potential for a loss of real property to a tax sale foreclosure and the incurrence of 18% interest.

E. The Disclosure Statement Describes a Process That Ignores the Protections of a Contract and Lease Counterparty Under Section 365

34. Another example of the Disclosure Statement's deficiencies lies in the lack of disclosure regarding the unorthodox process the Debtors propose with respect to the assumption of executory contracts and leases. Under the process described in the Disclosure Statement, the Debtors would essentially assume certain contracts and leases at confirmation – thereby locking in counterparties – yet make the assumption effective at some indeterminate time, if ever. No cure would be paid, if ever, until the plan goes effective, which flies in the face of a debtor's obligation to immediately cure defaults under such contracts and leases or provide adequate assurance that it will promptly cure such defaults upon assumption.

35. In addition to failing to describe how the Debtors can eviscerate the time limitations in section 365(d)(4), the Disclosure Statement fails to adequately identify the risk that counterparties to executory contracts and unexpired leases face by having their contracts and leases "assumed" on confirmation but then being forced to await an effective date that is off in the distant future and, in fact, may never come, including whether or not they will ultimately have defaults cured.

F. The Plan Seeks Impermissible Third Party Releases.

36. Finally, and though an issue for confirmation, the Disclosure Statement describes a Plan that improperly seeks non-consensual third-party releases. However, the Disclosure Statement provides no analysis of what occurs if the Debtors are unable to obtain this extraordinary relief. The Debtors should at least describe the standards that the Court should consider, highlight the extraordinary nature of the relief sought, and whether the Debtors plan to confirm the Plan should the Debtors fail to obtain the non-consensual third party releases.

RESERVATION OF RIGHTS

37. The Trump Parties reserve the right to object to the Disclosure Statement on any other basis, and to any further amendments to the Disclosure Statement. Additionally the Trump Parties reserve the right to object to confirmation of the Plan or any other plan and intend to seek discovery pertaining thereto. Finally, the Trump Parties reserve all of their rights, as applicable, under the License Agreement, including the right to object to any attempt by the Debtors to impermissibly assume and/or assume and assign the License Agreement, and all of their rights, as applicable, with respect to the Ground Lease, including but not limited to in connection with confirmation of the Plan.

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CONCLUSION

For the reasons stated above, the Trump Parties respectfully request that the Court deny approval of the Disclosure Statement unless and until the above objections are cured, and grant such other and further relief in favor of the Trump Parties as is just and proper.

Dated: January 12, 2015
Wilmington, Delaware

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